the right all along to do what it was enjoined from doing." Nintendo v. Lewis Galoob Toys, 16 F.3d 1032, 1036 (9th Cir. 1994), cert. denied, 115 S. Ct. 85 (1994). Although plaintiffs have made a strong showing of success on the merits, if it turns out that the Court's analysis is incorrect, then defendants will clearly incur greater expenses than the $50,000 proposed by plaintiffs.

However, the Court finds that the seventeen million dollar bond requested by defendants is excessive. The defendants' cost estimates are based on the assumption that they will be unable to use TBR as a basis for the Awards program. Since the Court is not enjoining the use of TBR per se, but only the use of plaintiffs' databases to calculate TBR for use in the PB Awards program, defendants' prior advertising of the program as based on TBR will not be affected by this injunction. The Court therefore finds that there is no need to include advertising expenses in the bond.

Defendants will, however, be required to redesign and reimplement the program consistent with this Court's order. They have submitted evidence that the initial design and implementation of the program cost $5,026,087 between January and July of 1996. (Hewitt 6/25/96 Decl. Ex. A.) The Court finds that a five million dollar ($5,000,000) bond provides a reasonable safeguard in the event that the defendants are wrongfully enjoined. The Court therefore exercises its discretion to set the bond at five million dollars.

/ / / /

/ / / /

CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED THAT plaintiffs' motion for a preliminary injunction is GRANTED.

IT IS FURTHER ORDERED THAT defendants, and each of them, and their agents, servants, and employees and all persons acting under, in concert with, or for them are hereby restrained and enjoined from:

1. Using any Billing Information in connection with the Pacific Bell Awards program or any similar program; and

2. Disclosing to any person or entity (including without limitation any affiliated entities or Awards Partners) any Billing Information in connection with the Pacific Bell Awards program or any similar program.

As used herein, "Billing Information" means all information supplied by plaintiffs to Pacific Bell pursuant to the billing agreements referenced in plaintiffs' complaints, including without limitation all call detail information, the total charge for long distance services and any information (such as the total of a customer's monthly bill) or databases of information (such as Pacific Bell's billing databases) calculated or derived from such information.

Defendants are not restrained from calculating PB Awards points based on a customer's TBR, including long distance usage, so long as the information and databases of information

used in the PB Awards program are independently created and maintained and are not in any way derived from the databases and information transmitted to Pacific Bell by plaintiffs under the Billing Agreements.

IT IS FURTHER ORDERED THAT, consistent with the provisions of Federal Rule of Civil Procedure 65(c), the preliminary injunction will take effect when plaintiffs have posted security in the amount of $5,000,000.00 with the Clerk of the Court.

IT IS FURTHER ORDERED THAT these consolidated actions are referred to District Judge Eugene F. Lynch for a MANDATORY SETTLEMENT CONFERENCE.

IT IS SO ORDERED.

DATED: July 3, 1996

Saundra B. Armstrong

SAUNDRA BROWN ARMSTRONG
United States District Judge

In the United States Court of Appeals

for the Ninth Circuit

AT&T COMMUNICATIONS, INC. et al., Plaintiffs-Appellees, vs. PACIFIC BELL, et al., Defendants-Appellants.	No. 96-16476 (N.D. Cal. No. CV 96-1691-SBA [Consolidated Action])

Preliminary Injunction Appeal from an Order
of the United States District Court
for the Northern District of California

APPELLANTS' REPLY BRIEF

BOBBY C. LAWYER
WALID S. ABDUL-RAHIM
Pacific Telesis Legal Group
140 New Montgomery, 10th Floor
San Francisco, CA 94105
Telephone: (415) 542-2182

PILLSBURY MADISON & SUTRO LLP
KEVIN M. FONG
225 Bush Street
Post Office Box 7880
San Francisco, CA 94120-7880
Telephone: (415) 983-1000

Attorneys for Appellants Pacific Bell, Pacific Telesis Group, Pacific Bell Extras and Pacific Bell Communications

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Codes

In the United States Court of Appeals

for the Ninth Circuit

AT&T COMMUNICATIONS, INC. et al., Plaintiffs-Appellees, vs. PACIFIC BELL, et al., Defendants-Appellants.	No. 96-16476 (N.D. Cal. No. CV 96-1691-SBA [Consolidated Action])

Preliminary Injunction Appeal from an Order
of the United States District Court
for the Northern District of California

APPELLANTS' REPLY BRIEF

INTRODUCTION

The only "proprietary information" used in the Pacific Bell Awards Program is a customer's "total billed revenue" or "TBR"--that is, the total amount at the bottom of the first page of each customer's bill that the customer is asked to remit to Pacific Bell. ER 616, 675; see ER 624, 627. The TBR dollar figure is the "proprietary information" of telephone customers, who consent to such use under the Awards program. Section 222(f)(1)(B) of the Telecommunications Act of 1996 provides that:

> "The term 'customer proprietary network information' means . . . information contained in the bills pertaining to telephone exchange service or

telephone toll service received by a customer of a carrier . . . ."

47 U.S.C. § 222(f)(1)(B). The district court agreed, recognizing: "[t]he plain language of section 222 supports defendants' argument that all information 'contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier'" is customer proprietary network information. ER 682-683.

Plaintiffs' various arguments cannot avoid this controlling, undisputed fact--the only "proprietary information" used in the Awards program is the TBR, which is the "proprietary information" of telephone customers, used with their consent.

ARGUMENT

I. THE DISTRICT COURT BASED ITS DECISION ON AN ERRONEOUS INTERPRETATION OF SECTION 222 OF THE TELECOMMUNICATIONS ACT OF 1996.

Plaintiffs do not, and cannot, seriously dispute that TBR is the "proprietary information" of telephone customers. Instead, plaintiffs' principal argument on appeal is that there exists "concurrent--but separate--contractual and statutory obligations to the Long Distance Carriers to respect the confidentiality of their proprietary billing information." Appellees Br., p. 26. Plaintiffs thus argue that "the customer's right to confidentiality and use of its information and the Carrier's right to confidentiality and

use of their data are not mutually exclusive." Appellees Br., p. 25.[1]

Plaintiffs' argument ignores the express terms of section 222(c)(2) of the Telecommunications Act, which provides:

> "(2) DISCLOSURE ON REQUEST BY CUSTOMERS.--A telephone communications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer."

47 U.S.C. § 222(c)(2) (emphasis added). The Pacific Bell Awards Program uses TBR squarely within the mandate of section 222(c)(2). Upon enrolling in the Pacific Bell Awards Program, each customer-enrollee furnishes to Pacific Bell a written, signed consent authorizing the transfer the customer's billing information to Pacific Bell Extras. ER 625-626. Based on these consents Pacific Bell (the telecommunications carrier) intended to transfer TBR lump sum information on program enrollees to a Pacific Bell Extras computer database for calculation of customer Awards points. ER 627, 643. By the time of any such transfer, the TBR would have appeared months earlier on monthly customer telephone bills (ER 717) and is thus "customer proprietary network information" or "CPNI." 47 U.S.C. § 222(f)(1)(B).

---

1 Similarly, plaintiffs assert that the customers' "'releases' do not relieve Pacific of its contractual and statutory duties to protect the Carriers' proprietary information" (Appellees Br., p. 16) and that Pacific has a "duty under the statute to protect the Carriers' data" (Appellees Br., p. 28).

Section 222(c)(2) establishes that the TBR used in the Awards program is the "proprietary information" of telephone customers. Under section 222(c)(2), a telecommunications carrier (such as Pacific Bell) "shall disclose" customer proprietary network information (such as TBR) to any person designated by the customer (such as Pacific Bell Extras). The customer has control over TBR, its "customer proprietary network information" under section 222(c)(2). Plaintiffs' argument that they have "concurrent" rights to limit the use of TBR and that such rights and the customer's rights "are not mutually exclusive" (Appellees Br., pp. 25-26) is plainly wrong. Section 222(c)(2) supersedes any "rights," if any, that plaintiffs might otherwise have to limit the use of TBR,[2] and gives customers the right to control the use of their "customer proprietary network information."

Plaintiffs never explain their assertion that this would be an "anomalous result." See Appellees Br., p. 25. Nor do plaintiffs ever explain their assertion that "[t]his interpretation would require the court to read §§ 222(a) and 222(c) as mutually inconsistent." Appellees Br., p. 28.

---

2 The Billing Agreements provide:

> "Notwithstanding any other provision in this Agreement, a Party's ability to disclose Proprietary Information or use disclosed information is subject to all applicable statutes, decisions, and regulatory rules concerning the disclosure and use of such information which, by their express terms state the requirements applicable to such information."

ER 140. See also, Gade v. National Solid Wastes Management Ass'n, 505 U.S. 88, 98 (1992).

"In general," under section 222(a) there is a duty to protect confidentiality of proprietary information of another carrier; however, section 222(c) gives customers the right to control the use of their "customer proprietary network information."

Similarly, plaintiffs erroneously argue that this interpretation would render the confidentiality provisions of the Billing Agreements "meaningless." Appellees Br., p. 23. The confidentiality provisions govern the use of the parties' "proprietary information" under a variety of circumstances. What is not governed by those provisions, however, is the customers' right to control the use of their "customer proprietary network information," such as TBR. That is governed by section 222(c).[3]

Another district court recently addressed the interpretation of section 222 of the Telecommunications Act, and

---

3 Plaintiffs erroneously attempt to rely upon the district court's question at the preliminary hearing:

> "Why would you all insert an agreement in a billing agreement that recognizes that certain information is confidential and proprietary if one easy way to avoid those provisions is [to] combined your information with it?"

Appellees Br., p. 23 (emphasis added); quoting ER 722. The district court's question is easily answered. Plaintiffs alleged, for example, that the confidentiality provisions governed confidential and proprietary information such as "MCI's pricing, marketing, and billing strategies" (ER 84); AT&T's coded "format[s]" (ER 96); and Sprint's "pricing and discount structure for each type of calling plan" (ER 196).

Indeed, the district court's question itself recognizes that only "certain information" is confidential and proprietary under the confidentiality provision. That "certain information" does not include "customer proprietary network information," such as TBR.

rejected the reasoning of the district court herein. In AT&T Communications of the Southwest, Inc. v. Southwestern Bell Telephone Company (hereinafter "Southwestern Bell"), No. A-96-CA-397 SS (W.D. Tex. Oct. 4, 1996), the U.S. District Court for the Western District of Texas (hereinafter "Texas district court") denied a motion for preliminary injunction sought by AT&T.[4] (For the convenience of this Court, the Order of the Texas district court is attached to the Request for Judicial Notice accompanying this brief.) In its Order and opinion in Southwestern Bell, the Texas district court held:

> "Section 222(c)(2) . . . provides that '[a] telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.' Customer proprietary network information ('CPNI') is defined as, among other things, 'information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier' See 47 U.S.C. § 222(f)(1)(B). It is clear, then, that 'information contained in the bills' regarding customer usage, times, etc. must

4 The AT&T plaintiff in Southwestern Bell sought a preliminary injunction to restrain Southwestern Bell from alleged misuse of proprietary information in contravention of section 222, alleged breaches of billing agreements and alleged trade secret misappropriations. AT&T alleged that the long-distance billing information involved was AT&T's proprietary information, and that the information could not be lawfully transferred without AT&T's consent.

be disclosed . . . upon 'affirmative written request' by the customer."

Southwestern Bell Order, pp. 5-6. After finding "the construction of CPNI advanced by AT&T and accepted by the court in Pacific Bell [the district court's opinion herein] to be cramped, at best,"[5] the Texas district court concluded that "AT&T does not have a significant chance of success on the

---

5 The Texas district court made this statement in response to the observation of the district court herein that plaintiffs' databases themselves "do not appear on customers' bills, . . . the databases are not CPNI, even if some of the data within those databases is." Southwestern Bell Order, p. 6; see ER 683. The Texas district court explained:

> "Section 222(f)(1)(B) states that 'information contained in the bills pertaining to telephone exchange service or telephone toll service' is CPNI. Plaintiff's reading of this provision would require an intellectual distinction between information contained in the bills and information contained in the databases. To make such a distinction would elevate form over substance, quite literally; the form (binary digits versus ink on paper), rather than the substance, would determine whether the information is CPNI. 'Information contained in the bills pertaining to telephone exchange service or telephone toll service' in its ordinary meaning must be simply the facts, the data, the raw knowledge regarding customer usage, times, etc."

Southwestern Bell Order, pp. 6-7. The same result is mandated by section 222(f)(1)(a), which provides that "customer proprietary network information" includes:

> "information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship . . . ."

47 U.S.C. § 222(f)(1)(A).

merits brought pursuant to the Telecommunications Act of 1996." Southwestern Bell Order, p. 13.

In issuing its preliminary injunction, the district court based its decision on an erroneous interpretation of section 222 of the Telecommunications Act.[6] The preliminary injunction must be reversed.

II. PACIFIC DID NOT MISUSE PLAINTIFFS' "PROPRIETARY INFORMATION."

Plaintiffs cannot avoid the fact that the only "proprietary information" used in the Awards program is the TBR, which is the "proprietary information" of telephone customers, used with their consent. Plaintiffs attempt to argue that the calculation of TBR "involve[s] the misuse of the Carriers' proprietary information." Appellees Br., pp. 31-32. According to plaintiffs, (1) "a database is a trade secret if the data contained in the database is the

---

6 The purpose of the Telecommunications Act is in pertinent part, "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers." Telecommunications Act of 1996, Pub. L. No. 104-104 (preamble), 110 Stat. 56, 56 (1996). Giving customers the power to control the use of their TBR and other "customer proprietary network information" furthers this important purpose.

In Southwestern Bell, the Texas district court concluded: "Both the plain language of the statute and the policy of increasing competition and securing lower prices for American telecommunications customers suggest the conclusion that customers may require the release of their CPNI to others." Southwestern Bell Order, pp. 12-13.

proprietary information of the owner of the database,"[7] (2) "the customer information the Carriers transmit to Pacific Bell for billing purposes is proprietary," and (3) the Carriers' confidential data is contained in their databases, and it is from these databases that Pacific Bell calculates TBR." Appellees Br., pp. 30-31.[8]

Plaintiffs' argument is plainly wrong. The use of long-distance billing information to calculate TBR cannot be a "misuse" of that information.[9] Under the Billing

---

7 Plaintiffs assert that the district court "entered a narrowly tailored order enjoining only the defendants' 'use or disclosure of the *plaintiffs' databases* in connection with Pacific's loyalty marketing program." Appellees' Brief at 15. That is far from true. The district court expressly enjoined the use and disclosure of all "Billing Information" which was broadly defined to include even "Pacific Bell's billing databases":

> "[D]efendants . . . are hereby restrained and enjoined from:
>
> "1. Using any Billing Information . . . and
>
> "2. Disclosing . . . any Billing Information in connection with the Pacific Bell Awards program . . .
>
> "As used herein, 'Billing Information' means all information supplied by plaintiffs . . . including without limitation all call detail information, the total charge for long distance services and any information (such as the total of a customer's monthly bill) or databases of information (such as Pacific Bell's billing databases) calculated or derived from such information."

ER 702.

8 Plaintiffs do not, and cannot, claim that appellants copied or misused the organization or techniques in their database. See Appellees Br., pp. 5, 7, 30, 31.

9 Plaintiffs erroneously assert that TBR "is nothing more than the sum of two numbers: total monthly Pacific Bell charges and total monthly long distance charges." Appellees (continued...)

Agreements, even "proprietary information" may be used for the purposes stated in the Billing Agreements. ER 137. Plaintiffs themselves recognize that "[t]he stated purposes of the Billing Agreements are Pacific Bell's billing and collection obligations to each Long Distance Carrier" (Appellees Br. p. 7) and that the Billing Agreements "permit Pacific Bell to use the long distance information to render a single bill to telephone customers that includes both local and long distance telephone charges" (Appellees Br., p. 5). Thus, use of long-distance billing information to calculate TBR was precisely what was contemplated in the Billing Agreements.[10]

Plaintiffs' real complaint is that Pacific Bell "then discloses TBR to its affiliates." Appellees Br., p. 16. But, as discussed above, such disclosure of TBR (with the consent of telephone customers) is authorized and, indeed, mandated by section 222(c)(2) of the Telecommunications Act.

9(...continued)
Br., p. 9, n.8; see Appellees Br., pp. 23-24. In fact, TBR is a much more complex composite of charges to a customer. Services provided by third parties other than plaintiffs may appear on a customer's bill, such as faxes, telephone answering, paging, videotext, voice messaging, alarm and e-mail. The billing data transmitted from plaintiffs is merged with all of these other charges, including those of Pacific Bell. It is not possible for anyone receiving the TBR to discern the identity of the service providers or amounts charged. ER 273, 275. The Awards program awards points based on TBR, thus reflecting charges from Pacific Bell and all third parties (not solely plaintiffs). ER 290.

10 "[T]he Billing Agreements contemplate that in performing its billing and collection services, Pacific Bell will add its own charges to the long distance charges extracted from the Carriers' proprietary databases in order to bill the customer, creating a total which Pacific calls TBR." Appellees Br., p. 22.

III. PLAINTIFFS ARE WRONG IN ASSERTING THAT PACIFIC HAS "ADMITTED" THE ISSUES ON APPEAL.

Plaintiffs erroneously assert, without any support whatsoever, that "Pacific admitted--in its pleadings, in its briefs, and in open court--that it uses billing information it receives from the Long Distance Carriers for its own marketing purposes." Appellees Br., p. 1. Nothing could be further from the truth.

The facts that plaintiffs claim were "admitted" (Appellees Br., pp. 8-10) are all entirely consistent with appellants' position on appeal: The only "proprietary information" used in the Awards program is the TBR, which is the "proprietary information" of telephone customers, used with their consent.[11]

IV. THE DISTRICT COURT'S ERRONEOUS INTERPRETATION OF THE TELECOMMUNICATIONS ACT UNDERLIES ITS HOLDINGS ON ALL THREE CAUSES OF ACTION.

If, as appellants have shown, the only "proprietary information" used in the Awards program is the TBR, which is the "proprietary information" of telephone customers, used

---

11 Apparently, plaintiffs resort to their erroneous "admissions" theory because they cannot avoid the mandate of section 222(c)(2) of the Telecommunications Act. No provision of the Billing Agreements negates section 222(c)(2) and, indeed, the Billing Agreements expressly recognize that "[n]otwithstanding any other provision in this Agreement" disclosure and use of information is subject to "all applicable statutes, decisions and regulatory rules." Supra, n. 2; ER 140; see App. Opn. Br., p. 19, n. 7 (discussing historical treatment by FCC of billing information as proprietary to customers).

with their consent (supra, pp. 3-4), the preliminary injunction must be reversed. The district court's erroneous interpretation of the Telecommunications Act underlies its holdings on all three causes of action.

The district court erroneously held that "[p]laintiffs have . . . demonstrated that they are likely to show that defendants have violated section 222(a) of the 1996 Act." ER 685. In fact, TRB is the proprietary information of telephone customers under section 222(f)(1)(B), and section 222(c)(2) confirms that telephone customers are empowered to permit use of their TBR.

The district court also erroneously held that "the evidence and admissions which are before the Court clearly demonstrate that Pacific Bell's use of the TBR data from the billing databases breaches the Billing Agreements." ER 680. However, section 222(c)(2) authorizes such use of TBR, and the Billing Agreements provide that "[n]otwithstanding any other provision in this Agreement, a Party's ability to disclose Proprietary Information is subject to all applicable statutes . . . concerning the disclosure and use of such information. . . ." ER 140.[12]

---

12 In Southwestern Bell, the Texas district court similarly held:

> "Furthermore, the agreement provides that '[n]otwithstanding any other provision in this Agreement, a Party's ability to disclose information or use disclosed information is subject to all applicable statutes, decisions, and regulatory rules concerning the disclosure and use of such information which, by their express terms, mandate a different handling of such information.'

(continued...)

Finally, the district court erroneously held that "plaintiffs have demonstrated that they are likely to succeed on their Trade Secrets claim." ER 688. However, the only "proprietary information" used in the Awards program is TBR which, as "proprietary information" belonging to, and controlled by, telephone customers (used with their consent), cannot be a trade secret belonging to plaintiffs.[13]

12(...continued)
See Agreement, Exhibit K(7). The customer information defined as 'proprietary' under the contract and at issue in this case is CPNI under the Telecommunications Act of 1996. *See* 47 U.S.C. § 222(f)(1)(B) (defining CPNI to include 'information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier'). Under the Act, CPNI *must* be disclosed by SWBT upon affirmative written request by the customer. *See id.* § 222(c)(2). The Act's disclosure provisions thus trump the agreement's disclosure provisions by the agreement's own terms."

Southwestern Bell Order, p. 14.

13 In Southwestern Bell, the Texas district court held:

> "Even if the database is classified as a trade secret, plaintiff's claim for misappropriation of its trade secret is likely to fail on the second required element. Given the disposition of the statutory and breach of contract claims, it cannot be said that the trade secret, the database, was 'acquired through a breach of a confidential relationship or discovered by improper means.' The contract expressly provides that contrary statutory provisions governing disclosure of customer information control, and the Telecommunications Act, as extensively discussed, likely provides for the disclosure of the database information at issue. Therefore, plaintiff is unable to establish a substantial likelihood of success on the merits of its misappropriation of trade secret claim."

Southwestern Bell Order, p. 16.

CONCLUSION

For the reasons stated above and in appellants' opening brief, appellants respectfully submit that the preliminary injunction order should be reversed.

Dated: November 4, 1996.

BOBBY C. LAWYER
WALID S. ABDUL-RAHIM

KEVIN M. FONG
PILLSBURY MADISON & SUTRO LLP

By 
Kevin M. Fong

Attorneys for Appellants
Pacific Bell, Pacific Telesis Group, Pacific Bell Extras and Pacific Bell Communications

CIRCUIT RULE 32(e) CERTIFICATION OF COMPLIANCE

The foregoing brief is double-spaced, uses monospaced typeface, and contains 14 pages.

Dated: November 4, 1996.

BOBBY C. LAWYER
WALID S. ABDUL-RAHIM

KEVIN M. FONG
PILLSBURY MADISON & SUTRO LLP

By _____
Kevin M. Fong

Attorneys for Appellants
Pacific Bell, Pacific Telesis
Group, Pacific Bell Extras
and Pacific Bell
Communications

PROOF OF SERVICE BY MAIL

I, CATHERINE M. HIBBELN, hereby declare:

1. I am over the age of 18 years and am not a party to the within cause. I am employed by Pillsbury Madison & Sutro LLP in San Francisco, California.

2. My business address is 225 Bush Street, San Francisco, California; my mailing address is Post Office Box 7880, San Francisco CA 94120-7880.

3. On November 4, 1996, I served a true copy of the attached document entitled ***APPELLANTS' REPLY BRIEF*** *by placing it in a sealed envelope and depositing it in the United States mail, first class postage fully prepaid, addressed to the following:*

Terry J. Houlihan, Esq.
Rebecca A. Lenaburg, Esq.
Nora Cregan, Esq.
Laura Mazzarella, Esq.
MCCUTCHEN DOYLE BROWN & ENERSEN LLP
Three Embarcadero Center
San Francisco CA 94111

R. Scott Puddy, Esq.
Kyle M. Fisher, Esq.
LEBOEUF LAMB GREENE & MACRAE LLP
One Embarcadero Center
San Francisco CA 94111

George S. Duesdieker, Esq.
Darren S. Weingard, Esq.
SPRINT LAW DEPARTMENT
1850 Gateway Drive, 4th Fl.
San Mateo CA 94404-2467

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of November, 1996, at San Francisco, California.

_____
Catherine M. Hibbeln

ATTACHMENT B

In the United States Court of Appeals

for the Ninth Circuit

AT&T COMMUNICATIONS, INC. et al., Plaintiffs-Appellees, vs. PACIFIC BELL, et al., Defendants-Appellants.	No. 96-16476 (N.D. Cal. No. CV 96-1691-SBA [Consolidated Action])

Preliminary Injunction Appeal from an Order of the United States District Court for the Northern District of California

REQUEST FOR JUDICIAL NOTICE

BOBBY C. LAWYER
WALID S. ABDUL-RAHIM
Pacific Telesis Legal Group
140 New Montgomery, 10th Floor
San Francisco, CA 94105
Telephone: (415) 542-2182

PILLSBURY MADISON & SUTRO LLP
KEVIN M. FONG
225 Bush Street
Post Office Box 7880
San Francisco, CA 94120-7880
Telephone: (415) 983-1000

Attorneys for Appellants Pacific Bell, Pacific Telesis Group, Pacific Bell Extras and Pacific Bell Communications

In the United States Court of Appeals

for the Ninth Circuit

AT&T COMMUNICATIONS, INC. et al., Plaintiffs-Appellees, vs. PACIFIC BELL, et al., Defendants-Appellants.	No. 96-16476 (N.D. Cal. No. CV 96-1691-SBA [Consolidated Action])

Preliminary Injunction Appeal from an Order
of the United States District Court
for the Northern District of California

REQUEST FOR JUDICIAL NOTICE

Appellants Pacific Bell, Pacific Telesis Group, Pacific Bell Extras and Pacific Bell Communications hereby request that the Court take judicial notice of the Order, filed October 4, 1996, by the United States District Court for the Western District of Texas (hereinafter "Texas district court") in AT&T Communications of the Southwest, Inc. v. Southwestern Bell Telephone Company (hereinafter "Southwestern Bell"), No. A-96-CA-397 SS (W.D. Tex. Oct. 4, 1996). A copy of that Order is attached as Exhibit A hereto. In its Order in Southwestern Bell, the Texas district court held:

"Section 222(c)(2) . . . provides that '[a] tele-communications carrier shall disclose customer